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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,678	12/19/2003	Beth A. Lange	KCC 4970 (K-C 17,973)	4168

321 7590 05/23/2007

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
FIDEI, DAVID	
ART UNIT	**PAPER NUMBER**
3728	

NOTIFICATION DATE	DELIVERY MODE
05/23/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

Office Action Summary	Application No.	Applicant(s)	
	10/741,678	LANGE, BETH A.	
	Examiner	Art Unit	
	David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 April 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-5,7-15,18-26,28 and 29* is/are pending in the application.

4a) Of the above claim(s) *2-5,7-14,18,19 and 24-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15,20-23,28 and 29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Election/Restrictions

1. Claims 2-5, 7-14, 18, 19 and 24-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper filed April 4, 2006.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 15, 23, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrlich (US Patent no. 4,221,221) in view of Gallo et al (US Patent no. 6,622,856). Ehrlich discloses a utility diaper structure 12 that includes a diaper assembly 14 having container assemblies 16 connected by adhesive directly to the absorbent article 14, e.g., see col. 2 lines 43-44. The difference between the packaged assembly of Ehrlich and claim 29 resides in one of the container assemblies being a sunscreen carrier.

Gallo et al is cited for the teaching of kit of products including diapers and sunscreen, see col. 3, lines 39-40, col. 4 line 12 and col. 5, line 26. Hence to provide the combination sunscreen and diaper is suggested by Gallo et al. It would have been obvious to one of ordinary skill in the

art to modify the assembly of Ehrlich by including a sunscreen composition as suggested by Gallo et al, in order to provide added protection utility to the assembly.

As to claim 15, the list of sunscreens compiled appears to encompass all conventional forms of the product that would be envisioned by general disclosure of Gallo et al.

As to claim 23, the absorbent article defined as a pair of swim pants is not distinguishable from the absorbent article of Ehrlich because diapers have been used as "swim pants" in pools.

Furthermore, a patentable distinction does not exist between diapers and swim pants because any difference would be a function of intended use. A reference that contains all the structure defined in a claim, but not the recited use anticipates the claim because a new use does not make an old product patentable, In re Schreiber, 128 F.3d 1473, 44 U.S.P.Q.2d 1429 (Fed. Cir. 1997).

5. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to the claims above, and further in view of Moore (Patent no. 6,405,867).Moore discloses a sunscreen carrier in addition a UV indicator that changes color as a display means integral with the sunscream carrier, e.g., see col. 1, lines 54-56, 60, 61.

It would have been obvious to one skilled in the art at the time the invention was made to modify the package of Gallo et al by employing a suncream carrier as taught by Moore, in order to provide a sunscreen that not only protects the user but informs one of the UV conditions and whether or not sufficient sunscreen protection is provided by the sunscreen product.

Response to Arguments

6. Applicant's arguments filed April 10, 2007 have been fully considered but they are not persuasive. Applicant argues nowhere does Ehrlich teach or suggest releasably securing, onto a diaper, any products that are wholly unrelated to the diaper and the diaper changing process, let alone sunscreen as recited in present claim 29. While this sounds convincing, it is not what Ehrlich teaches. Col.3, lines 37-41 states "While the invention has been described in conjunction with the preferred specific (emphasis added) embodiments thereof, it will be understood that this description is intended to illustrate and not to limit the scope of the invention, which is defined

by the following claims". And what do the claims of Ehrlich ascribe? A diaper structure having a container assembly having a baby maintenance item sealed therein, see claim 1 of Ehrlich. This is also consistent with col. 1, lines 44-46 where an object of the invention of Ehrlich is to provide a diaper structure having removable container assemblies thereon to hold baby maintenance items thereon. While a specific embodiment shows container assemblies in a "pre-packaged" form located on the diaper that would involve products one would expect as being associated with a diaper changing operation, the disclosure of Ehrlich is much broader. Encompassing container assemblies pertaining to baby maintenance. Given the broad disclosure of Ehrlich and the level of ordinary skill in the art it is questionable whether a secondary teaching is necessary to establish prima facie obviousness of the invention inasmuch as is claimed.

Nonetheless, Gallo et al is cited for the teaching of a kit of items including the association of sunscreen with diapers. It is not agreed Gallo et al adds little to Ehrlich but is particularly pertinent in teaching items that could be characterized as associated with baby, or infant, care. Care of such children including but not limited to fever, pain, congestion, gas, skin irritation and irritability, col. 1, lines 6-10. If Gallo et al can be said to represent the state of the art then it appears a wide variety of products can be grouped together for the care of a child. So much so that new parents are frequently overwhelmed at the number of products to care for the comfort of a child, col. 1, lines 12-14. Gallo et al suggests that, depending upon the needs of a child, one often purchases products associated with child care. For example when a child catches cold, it is common to purchase cold medicine, col. 1, lines 18-22. If a child has diaper rash it common to purchase ointments, col. 1, lines 29-32. If a baby suffers from discomfort from gas pain, parents frequently purchase products and give them to the baby to relieve gas pain, col. 1, lines 33-35. It stands to reason that if a child needs protection from the sun parents would purchase products that give sun protection. It is common to take infants/small children to places where such protection is needed such as beaches, pools, concerts, festivals or merely outdoors. Parents also frequently apply sunscreen to the child for protection from the possible adverse effects of being outdoors. Rather than purchasing the products individually Gallo et al recognizes the need to provide child comfort care in a kit that conveniently provides products needed to relieve children from discomfort and organizes them in an effective manner. Hence, one skilled in the art would be motivated to provide child care products in a single collection as suggested by Gallo et al.

Gallo et al recognizes the use of a sunscreen product in child care, it is prima facie obvious to merely modify the container of Ehrlich by including such a product.

While it is recognized Gallo et al does not disclose the sunscreen directly secured to an absorbent article, the question of obviousness is what the prior art, taken as a whole suggests. Ehrlich does show the containers 16 directly applied to the absorbent article and in keeping with that teaching it is the sunscreen that would have been included for one of the container assemblies that is secured to the absorbent article. Accordingly, there is no distinction between claimed subject matter and the prior art, taken as a whole, in this capacity. For these and the above reasons it is submitted claim 29 is not patentable over the references of record.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 2724562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David T. Fidei
Primary Examiner
Art Unit 3728

Dtf
May 16, 2007